

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

Mitchell H. Cohen Building & U.S. Courthouse  
4th and Cooper Streets  
Camden, New Jersey 08101  
Wednesday, July 31, 2024  
Commencing at 1:00 p.m.

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**Also present:**

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Robert B. Kugler (Ret.)

1 (PROCEEDINGS held via remote TEAMS videoconferencing  
2 before the Honorable Thomas I. Vanaskie (Ret.), Special Master,  
3 at 1:00 p.m. as follows:)

13:01:02 4 THE COURT: Who will be speaking on behalf of  
13:01:04 5 plaintiffs today?

13:01:06 6 MR. SLATER: Hello, Your Honor. It's Adam Slater,  
13:01:08 7 and I believe that Zalman Kass will also be speaking. And I'm  
13:01:16 8 not sure if any other issues will come up unanticipated, but  
13:01:18 9 that's, I think, our anticipated lineup.

13:01:21 10 THE COURT: All right. Very well. Thanks.  
13:01:23 11 And who will be speaking on behalf of the defendants?

13:01:30 12 MR. OSTFELD: Good afternoon, Judge Vanaskie. This  
13:01:31 13 is Greg Ostfeld. I'll be speaking on behalf of the defendants  
13:01:34 14 on the two items that are set forth in the letters. And if  
13:01:37 15 there are other items that come up, others may speak up as  
13:01:40 16 well.

13:01:40 17 THE COURT: Very well. Thanks, Greg.

13:01:43 18 All right. Let's get started then. Now is the time  
13:01:46 19 that has been set for a discovery conference. I have agenda  
13:01:53 20 letters dated July 29, 2024 from Adam Slater and from Clem  
13:02:05 21 Trischler. And there are two matters that have been teed up on  
13:02:12 22 the agenda letters. I'm going to take up the question of  
13:02:15 23 punitive damages first. That seems to me to be a fairly narrow  
13:02:21 24 or perhaps narrowing issue.

13:02:26 25 The defendants in their letter indicated that they

13:02:34 1 wanted additional time to speak with their clients and meet and  
13:02:41 2 confer with plaintiffs with the prospect of there being a  
13:02:47 3 resolution of the issue.

13:02:50 4 Did you want to elaborate at all, Greg?

13:02:54 5 MR. OSTFELD: I think I set it out in the letter.

13:02:56 6 What had begun as a list of eight items is now -- at the  
13:03:00 7 conference before Judge Bumb, what plaintiffs indicated they  
13:03:03 8 want is updated financial information regarding gross revenues  
13:03:06 9 and net worth of the companies.

13:03:08 10 I think we need to have a conversation with our  
13:03:11 11 clients about that. And we've begun those conversations, and  
13:03:14 12 then have a conversation with plaintiffs' counsel to see what  
13:03:17 13 form that would take and if there's an acceptable resolution  
13:03:20 14 that can be reached.

13:03:21 15 And we did try to see if we could get there and have  
13:03:24 16 that conversation with plaintiffs. We weren't even able to  
13:03:27 17 reach out to plaintiffs' counsel because we didn't have  
13:03:29 18 information from our clients. So just we basically need a  
13:03:32 19 little bit more time. I think this is now a resolvable issue  
13:03:35 20 or at least a potentially resolvable issue, so I think a little  
13:03:38 21 more time would benefit the parties.

13:03:40 22 And we've got almost three months to trial. So I  
13:03:43 23 think there's time to work this out, if we can, or to take it  
13:03:46 24 back to Your Honor if we can't.

13:03:48 25 THE COURT: All right. Adam.

13:03:50 1 MR. SLATER: Yes, Judge. That sounds reasonable.  
13:03:53 2 Although I would like to hope that we could get this issue  
13:03:55 3 resolved in the next, you know, few weeks, as opposed to using  
13:03:59 4 up the whole three months.

13:04:00 5 I know that's not what Greg meant, but we'd like to  
13:04:03 6 hope that we could get it resolved, based on what the  
13:04:06 7 defendants said in their letter, in the fairly near future.

13:04:09 8 THE COURT: Yeah. It's not -- potentially it's an  
13:04:14 9 issue that is not only resolvable but is narrow in scope.  
13:04:18 10 Especially if the extent of discovery being sought is that  
13:04:24 11 which was represented to Judge Bumb during the conference, it  
13:04:30 12 would seem to me to be fairly easy to confirm the information  
13:04:34 13 that's publicly available and confirm that that represents the  
13:04:41 14 net worth and gross revenues of ZHP and of the other  
13:04:48 15 defendants. So hopefully you can resolve this.

13:04:55 16 What I would like is a letter report on the status of  
13:04:58 17 your discussions within ten days of today. So by August 10th,  
13:05:08 18 all right?

13:05:13 19 MR. SLATER: Will do, Your Honor.

13:05:16 20 THE COURT: All right. Thank you.

13:05:17 21 All right. The next issue I had on the agenda deals  
13:05:21 22 with the brouhaha that has arisen over the MSP Recovery  
13:05:30 23 assignments.

13:05:35 24 This seems to have taken on a life of its own and  
13:05:39 25 seems to be a very substantial issue, unless I'm missing

13:05:44 1 something.

13:05:47 2 Now, the plaintiffs in their agenda letter suggested  
13:05:51 3 that they be given leave to move for summary judgment on what  
13:05:56 4 they believe would be an issue of law.

13:06:00 5 Did you want to elaborate on that, Adam, at all?

13:06:08 6 MR. KASS: Your Honor, I'll be addressing this, this  
13:06:11 7 issue. So, yes, Your Honor.

13:06:15 8 THE COURT: Okay.

13:06:16 9 MR. KASS: With respect to filing a motion for  
13:06:19 10 summary judgment, because this actually is a legal issue and is  
13:06:23 11 not an issue that should be dealt with by the jury, Your Honor,  
13:06:25 12 we've done research as to the laws of the various states that  
13:06:28 13 could apply to the issue. And by "the issue," I mean the  
13:06:33 14 sufficiency of the consideration in these assignments.

13:06:37 15 Your Honor, we looked at the laws of both Florida and  
13:06:40 16 Delaware, which is the choice of law, also the provisions, and  
13:06:45 17 also the states of New York and Ohio, which I'm aware the  
13:06:49 18 assignors are located, just in an abundance of caution. And,  
13:06:52 19 Your Honor, every single one of those states uniformly says  
13:06:55 20 that the sufficiency of consideration is not something for the  
13:06:59 21 Court to determine, right?

13:07:00 22 As long as there's a statement that there was  
13:07:02 23 valuable consideration made, going to the sufficiency is not a  
13:07:06 24 consideration for the Court to decide and much less for a jury  
13:07:09 25 to decide. The parties are free to make their own deals, their

own deals. And, Your Honor, that's based on the fact that consideration can be a very little amount, right, Your Honor.

The peppercorn theory is still alive and well. Florida, there's cases still citing to that saying that as long as there's a peppercorn of consideration that has been submitted, that's going to be sufficient. So, Your Honor, our position is that this can be very easily addressed on a motion for summary judgment.

And, Your Honor, just to give a little preview of what our evidence would be is, if you look at the assignments, every single one of the assignments says that this deal is being made for good and sufficient valuable consideration, which is hereby acknowledged. So every single assignment has the language acknowledging that there is consideration. There's no need to go in deeper as to what that consideration is, because the law doesn't require that.

Your Honor, also in the deposition of George [sic] Lopez, MSP's corporate representative, he testified that there was consideration for every single one of the assignments. And, in fact, Your Honor, while he didn't have -- he wasn't willing to disclose the exact number for Emblem prior to speaking to counsel because he knew it was an issue as to confidentiality and trade secrets, he did disclose the actual consideration for the SummaCare assignment. And the defendants know that. They've known that since April of 2021. It's a



13:08:35 1 percentage of the recovery, and he disclosed the percentage.  
13:08:38 2 They even have the document stating the percentage of the  
13:08:41 3 consideration.

13:08:41 4 So, Your Honor, we believe this can be addressed  
13:08:44 5 easily, quickly on a motion for summary judgment that we would  
13:08:47 6 file on the very specific, targeted issue as to the  
13:08:50 7 consideration under the assignment agreements.

13:08:54 8 And then just one other just simple observation, Your  
13:08:58 9 Honor, this is a bit of much to do about nothing, right? You  
13:09:01 10 know, even if the Court were inclined to go into the  
13:09:04 11 sufficiency of the consideration, again, Your Honor, it's only  
13:09:07 12 a peppercorn's worth. And we know MSP clearly paid a lot more  
13:09:11 13 than a peppercorn. And we even know that by just the conduct  
13:09:15 14 of the assignors throughout this entire litigation. They've  
13:09:19 15 produced all the relevant claim data. They've produced  
13:09:22 16 thousands of documents, internal communications, claims  
13:09:25 17 policies. They've sat for depositions twice, and now they're  
13:09:28 18 preparing for trial.

13:09:29 19 Your Honor, they clearly received something of value  
13:09:32 20 in return for assigning their claims. And the easiest way to  
13:09:36 21 deal with this is a matter of law on a motion for summary  
13:09:39 22 judgment.

13:09:40 23 THE COURT: All right. Greg.

13:09:43 24 MR. OSTFELD: Thank you, Judge.

13:09:44 25 So I'll begin with, I'm not familiar with, nor have

13:09:48 1 plaintiffs cited the case law that Mr. Kass is referring to  
13:09:53 2 regarding a peppercorn being sufficient. We did provide our  
13:09:56 3 law in our letter and in our trial brief documentation where it  
13:09:59 4 is our understanding that a peppercorn's recitation or a bare  
13:10:02 5 recitation of \$10, which Mr. Lopez acknowledged wasn't in fact  
13:10:07 6 paid, is not sufficient under Florida or Delaware law. And we  
13:10:11 7 provided the authorities on that, and I'd be happy to read them  
13:10:15 8 into the record here.

13:10:16 9 But the bottom line is, we've been at issue for a  
13:10:18 10 very long time on the sufficiency -- the validity and the  
13:10:23 11 sufficiency of the assignments. Plaintiffs have been aware of  
13:10:25 12 that, and they've made a decision as to what documents they  
13:10:28 13 were going to disclose and what testimony they were going to  
13:10:32 14 give on this. And they've chosen, for whatever reason, to  
13:10:34 15 never actually disclose the actual amount paid.

13:10:37 16 It is our belief that they cannot make their case for  
13:10:40 17 the validity of the assignments without doing so. It is also  
13:10:42 18 our belief that this is an issue for the jury and not for the  
13:10:45 19 Court.

13:10:46 20 Also, the time for summary judgment has passed. And  
13:10:49 21 they elected not to seek summary judgment on this issue, so we  
13:10:53 22 would oppose bringing a new summary judgment motion, especially  
13:10:56 23 one that would involve any disclosure of new information that  
13:10:59 24 hasn't been provided in discovery.

13:11:01 25 If Your Honor chooses to entertain summary judgment

on this issue, we'll obviously engage in that. And what we believe we'll show is that this is a disputed question of fact for trial.

I also have to respectfully disagree with Mr. Kass's characterization of what Jorge Lopez said about the SummaCare consideration. What Mr. Lopez acknowledged was that at the time of the original assignment, there was a contingent consideration that was paid, but he said that there was a subsequent agreement, a subsequent purchase agreement where MSP purchased that consideration back from SummaCare for a fixed sum, and he declined to identify what that sum was. They also subsequently declined to provide that agreement.

There's also, as to Emblem, an Asset Purchase Agreement that purports to have the actual consideration paid, which they've declined to provide. And, again, these are their decisions. This is an issue on which they have the burden of proof. It's an issue on which we have been and remain in controversy, and that's clear on the face of the pleadings. And they had the choice as to what evidence they wanted to disclose and what they were willing to put forward on their burden of proof.

It sounds like they've made a calculated, strategic decision that they think they can prove up the validity of their assignments through recitations and through the peppercorn test. We believe that's wrong.

13:12:18 1 But in any case, we think that's an issue for trial,  
13:12:21 2 not for summary judgment. And we suggested whether it's at  
13:12:23 3 trial or summary judgment, what MSP should be confined to is  
13:12:26 4 the decision they've made, the documents they've produced in  
13:12:29 5 discovery, the testimony they've given and nothing more.

13:12:32 6 And if they believe they can prove the validity of  
13:12:34 7 their assignments under Florida and Delaware law and any other  
13:12:38 8 applicable law through the peppercorn test, they're welcome to  
13:12:41 9 try to make that case to the jury or, if Your Honor entertains  
13:12:43 10 summary judgment, to the Court. But that should be the world  
13:12:46 11 they're confined to because that's what they chose to disclose  
13:12:49 12 in discovery. That's the strategic choice they made.

13:12:54 13 THE COURT: Am I correct, Greg, that the defense did  
13:12:59 14 not move to compel production of the redacted information?

13:13:06 15 MR. OSTFELD: We did not move to compel that  
13:13:07 16 information. And we did not move for summary judgment on that.  
13:13:12 17 And I think this is the "brouhaha" that Your Honor referred to.

13:13:16 18 And I will say, you know, I sometimes get a little  
13:13:18 19 bit excited at argument, and I perhaps expressed myself a  
13:13:20 20 little more vigorously than I would have liked to to Judge  
13:13:23 21 Bumb. And I know that she didn't necessarily love the way that  
13:13:27 22 I expressed myself. But the point I was trying to make is,  
13:13:30 23 this is an issue on which Plaintiffs have the burden of proof.  
13:13:33 24 It's not an issue on which Defendants have the burden of proof.  
13:13:36 25 We're not required to move to compel on an issue where we don't

13:13:39 1 have the burden, nor are we required to move for summary  
13:13:42 2 judgment on that any more than Plaintiffs are required to move  
13:13:46 3 for summary judgment on an issue in which they have the burden  
13:13:48 4 of proof. We both made our strategic choices here. And where  
13:13:51 5 we are now is getting ready for trial where this is a contested  
13:13:53 6 issue for trial.

13:13:54 7 And respectfully, all we're saying is, you know, we  
13:13:56 8 should both be stuck with the strategic choices we've made.  
13:13:59 9 And if plaintiffs want to meet their burden of proof on this  
13:14:02 10 issue, they should meet their burden of proof with what they've  
13:14:05 11 chosen to produce and the testimony they've chosen to give.

13:14:10 12 THE COURT: All right. Zalman.

13:14:14 13 MR. KASS: Yes, if I may.

13:14:14 14 So, first of all, Your Honor, I want to make clear  
13:14:17 15 that this was not a contested issue, the adequacy of the  
13:14:21 16 sufficiency -- the adequacy of the consideration up until the  
13:14:24 17 hearing last week, Your Honor.

13:14:27 18 If we look at their trial brief, even in the trial  
13:14:30 19 brief that the defendants submitted, their issue is they're  
13:14:34 20 stating that there's nobody to authenticate the assignments and  
13:14:37 21 therefore we can't introduce the assignments at trial. That's  
13:14:41 22 the issue they raised.

13:14:41 23 And, Your Honor, last week at the last minute there's  
13:14:43 24 a switcheroo and it changes that all of a sudden MSP can't  
13:14:47 25 prove what the -- what the consideration was for the

13:14:53 1 assignments.

13:14:56 2 And, again, Your Honor, as also Judge Kugler has  
13:14:58 3 found before, right, he said -- Judge Kugler found in ruling on  
13:15:04 4 defendants' motion to decertify the class that MSP's status as  
13:15:09 5 an assignee is not challenged, right? It's not been challenged  
13:15:12 6 at any point in time.

13:15:14 7 Your Honor, had they believed this was a real issue,  
13:15:17 8 right, at the end of George Lopez's deposition, Mr. Ostfeld  
13:15:23 9 said on the record, after Mr. George Lopez said I'm not  
13:15:26 10 comfortable disclosing the amount without speaking to counsel,  
13:15:29 11 he said, that's okay, that's fine for me now, I'll deal with it  
13:15:32 12 later. That's what he stated on the record, right?

13:15:34 13 And then later on we get a letter where it's  
13:15:36 14 complaining about a whole various amount of other things, and  
13:15:39 15 buried in there it says, hey, we want all the documents related  
13:15:42 16 to the assignments and the consideration. And we responded:  
13:15:45 17 We're going to produce more documents. And we did produce more  
13:15:49 18 documents.

13:15:49 19 And we also said in our letter back to the defense  
13:15:52 20 counsel: If after reviewing the documents you want to meet and  
13:15:55 21 confer, we're happy to do that. If you want to have a  
13:15:58 22 meet-and-confer about reopening the deposition, we're happy to  
13:16:01 23 do that, and then it just died out, Your Honor.

13:16:03 24 So to now wait three years and then on the eve of  
13:16:06 25 trial to try and inject this into the trial and try and

13:16:09 1 introduce issues that aren't relevant to the core of this case,  
13:16:13 2 which is about contaminated valsartan, Your Honor, it's unduly  
13:16:18 3 prejudicial, and it will sideline the trial.

13:16:21 4 Your Honor, so ultimately, it's our position that  
13:16:22 5 this is a legal issue that can be addressed by Your Honor on a  
13:16:25 6 motion for summary judgment. And, Your Honor, I have these  
13:16:29 7 cases. I'm happy to submit them. Mr. Ostfeld believes there  
13:16:32 8 are other cases. Well, both sides could submit their cases on  
13:16:35 9 a motion for summary judgment. We'll establish what the law  
13:16:37 10 is. We'll establish what the proofs are that we need to  
13:16:39 11 resolve this issue, and we could address it before it even has  
13:16:44 12 to go to the trial and become a sideshow litigation.

13:16:47 13 Oh, and then just one other issue, just to address  
13:16:52 14 one thing that Mr. Ostfeld said, with respect to the SummaCare  
13:16:55 15 assignment, that there was the contingent purchase, that was  
13:17:00 16 the consideration of a certain percentage of any recovery.  
13:17:03 17 That was a consideration for the assignment.

13:17:05 18 What happened is a year later, MSP went and bought  
13:17:11 19 that consideration back from SummaCare, right? But the  
13:17:14 20 consideration was done already at the time of assignment.

13:17:16 21 The fact that MSP a year later for a certain sum went  
13:17:19 22 and bought that contingent recovery is irrelevant. It could  
13:17:23 23 have been any other person on the planet that bought that  
13:17:26 24 contingent recovery. It wouldn't change the validity of the  
13:17:29 25 assignment.

13:17:30 1 And, Your Honor, what this does show is that  
13:17:32 2 plaintiffs have the information that they need to enter into a  
13:17:36 3 stipulation as to validity of assignments. They could do it.  
13:17:40 4 They don't -- they're not missing information, at least with  
13:17:42 5 respect to SummaCare, right? But what they're trying to do is  
13:17:45 6 create an issue for trial that will distract the jury.

13:17:48 7 MR. OSTFELD: Your Honor, may I be heard briefly?

13:17:50 8 THE COURT: Yes.

13:17:51 9 MR. OSTFELD: Thank you, Judge.

13:17:52 10 So I want to begin with the switcheroo point, because  
13:17:55 11 there's definitely been no switcheroo here, and there's been no  
13:17:58 12 ambush. And this issue has been at issue long before last  
13:18:01 13 week's hearing. All you have to do is look at the face of the  
13:18:03 14 pleadings to know this.

13:18:04 15 In Plaintiffs Third-Amended Class Action Complaint,  
13:18:08 16 paragraphs 60 through 67, they set forth the facts that they  
13:18:12 17 believe support the validity of their assignments. They  
13:18:15 18 understood from the beginning this was part of their burden of  
13:18:17 19 proof.

13:18:17 20 And if you look at each of our answers, each  
13:18:19 21 defendant has contested those allegations. So on the face of  
13:18:22 22 the pleadings, we are and we have been at issue on this.

13:18:25 23 THE COURT: Yeah. "Contested those allegations."  
13:18:27 24 I'm sorry, but I did want to interrupt you. You contested  
13:18:30 25 those allegations, or the defendants contested those



13:18:34 1 allegations essentially by claiming a lack of knowledge or  
13:18:37 2 information to respond to those allegations.

13:18:39 3 MR. OSTFELD: That's correct, Your Honor.

13:18:41 4 THE COURT: Okay.

13:18:42 5 MR. OSTFELD: And the discovery history bears that  
13:18:43 6 out. After extensive discovery, we still lack knowledge and  
13:18:47 7 information as to those allegations.

13:18:48 8 I've laid out in our letter the three sets of written  
13:18:52 9 discovery that pertained to this, the stipulations that this  
13:18:54 10 information would be provided. It was 40 pages of questioning  
13:18:58 11 of Jorge Lopez on this.

13:19:01 12 I respectfully disagree with the characterization of  
13:19:02 13 that letter I sent after that deposition as burying the request  
13:19:06 14 for the consideration terms and burying the request for the new  
13:19:10 15 documents that Mr. Lopez testified to.

13:19:12 16 And I also disagree with Mr. Kass's characterization  
13:19:13 17 of their responsive letter, which did say they were going to  
13:19:16 18 produce some new documents, but they expressly opposed and  
13:19:19 19 rejected my request for the additional documents that contained  
13:19:22 20 the consideration terms and for the disclosure of the  
13:19:25 21 consideration. They took the position that wasn't something  
13:19:27 22 they were required to disclose.

13:19:29 23 Could I have moved to compel at that point? I could  
13:19:31 24 have. But it's not an issue on which I bear the burden of  
13:19:33 25 proof.

13:19:34 1 We also made clear in our class certification  
13:19:37 2 briefing that the validity of the assignments was subject to  
13:19:39 3 dispute and that that was going to be an issue for trial.

13:19:42 4 I will say, I read, and I had forgot -- either I had  
13:19:47 5 forgotten or I had not noted this -- that Judge Kugler's  
13:19:50 6 expression of his belief in the Decertification Opinion that  
13:19:53 7 this was not a contested issue. And I say this with the  
13:19:57 8 greatest respect to Judge Kugler, that wasn't a merits  
13:20:01 9 determination of the assignments issue. It was a stray remark  
13:20:04 10 by Judge Kugler expressing his understanding as to what the  
13:20:07 11 contested issues were when he wrote the Decertification  
13:20:09 12 Opinion.

13:20:10 13 And with respect to this issue, I would again say  
13:20:13 14 with greatest respect to Judge Kugler, he was mistaken in his  
13:20:16 15 understanding on this one. He's a, you know, a mortal human  
13:20:20 16 being and there are a lot of paper in this case. And I think  
13:20:23 17 he simply made that statement without necessarily referencing  
13:20:27 18 back to the pleadings and not necessarily referencing back to  
13:20:30 19 the prior certification briefing which placed this at issue.

13:20:33 20 So there's no switcheroo here. There's no ambush  
13:20:36 21 here. Plaintiffs have always known that part of their case was  
13:20:39 22 going to require them to prove up these assignments. They knew  
13:20:42 23 that it was a contested issue, and they chose the terms on  
13:20:45 24 which they were going to try to do that.

13:20:47 25 And respectfully, you know, I defer to the Court on

13:20:50 1 whether you want to try to take this up as a summary judgment  
13:20:53 2 issue first. And we can certainly present our case law on  
13:20:56 3 that.

13:20:56 4 I do think the time for summary judgment has passed,  
13:20:58 5 and we're getting ready for trial now, and that's really how we  
13:21:01 6 should proceed.

13:21:03 7 THE COURT: Zalman, anything else?

13:21:08 8 MR. KASS: Sure. Yes, Your Honor.

13:21:09 9 I think if anything has passed, it's been the time to  
13:21:11 10 raise this issue for the Court on the eve of trial.

13:21:14 11 I keep on hearing defense counsel saying that  
13:21:15 12 everybody knew the assignments were an issue, but there's no  
13:21:18 13 specific citation to anything where we knew it was going to be  
13:21:21 14 an issue.

13:21:21 15 The only thing defense counsel could cite to is that  
13:21:24 16 we cited -- we simply stated in our complaint our standing,  
13:21:27 17 right, just like everything else. That doesn't mean everything  
13:21:30 18 in the complaint is going to be contested.

13:21:32 19 And, in fact, Your Honor, in the answer, which Your  
13:21:34 20 Honor rightly noted, they simply said they lacked knowledge.  
13:21:38 21 That answer only came a few months ago. That was an answer  
13:21:40 22 that they filed this past fall.

13:21:42 23 And, Your Honor, I do want to also, again, go back to  
13:21:45 24 the deposition of George Lopez; that this is what Mr. Ostfeld  
13:21:51 25 said in the deposition of George Lopez after he said -- after

13:21:55 1 he disclosed the consideration for the SummaCare assignment and  
13:21:57 2 after he said I am not comfortable disclosing the dollar amount  
13:22:01 3 paid for the Emblem assignment, Mr. Ostfeld said: "For the  
13:22:06 4 purposes of today, I'm content not to have an answer on the  
13:22:09 5 record for that, but I reserve the right to revisit this issue  
13:22:12 6 with your counsel at a later date and to get the answer to  
13:22:15 7 those questions," Your Honor.

13:22:16 8 All we got was a muddled letter and we had a response  
13:22:20 9 back, Your Honor. I mean, I don't think it serves us both to  
13:22:25 10 continue trying to describe what the letter is and what we both  
13:22:28 11 believe what it says.

13:22:28 12 THE COURT: Right.

13:22:30 13 MR. KASS: I mean, if Your Honor would like us to  
13:22:31 14 submit it, we can submit it.

13:22:32 15 I do also want to point out, Your Honor, that many of  
13:22:34 16 the documents that Mr. Ostfeld is complaining about, the  
13:22:37 17 confidential purchase agreement, we subsequently produced it.  
13:22:39 18 It's Bates No. 5959.

13:22:42 19 Your Honor, the recovery agreement, we also produced  
13:22:44 20 it, okay. That's Bates No. 1156. If defense counsel didn't  
13:22:48 21 like the contents of this document or didn't believe that the  
13:22:52 22 redactions were done correctly or they believe that they needed  
13:22:55 23 more information in these documents, the remedy was to come  
13:22:58 24 back to us and say, hey, plaintiffs' counsel, we have an issue  
13:23:01 25 with this. And if we can't resolve it, we go to Judge

13:23:03 1 Vanaskie. We have CMC conferences every other week, and we  
13:23:07 2 resolve this three years ago, right? To now bring this up at  
13:23:10 3 the last minute, the eve of trial, that's too late, Your Honor.

13:23:16 4 THE COURT: Go ahead, Greg.

13:23:18 5 MR. OSTFELD: Judge, can I say one more thing?  
13:23:19 6 Because I was quoted, but I was only partially quoted. I went  
13:23:22 7 on to say after the section that Mr. Kass cited: "It's our  
13:23:25 8 position we are entitled to know the amount or the range of the  
13:23:28 9 consideration and that we're also entitled to the purchase  
13:23:30 10 agreement for Emblem Health and that we are entitled to the  
13:23:33 11 Claims Purchase Agreement for SummaCare." And I went on to  
13:23:36 12 memorialize that in my letter, and plaintiffs went on to oppose  
13:23:39 13 that request and not to produce those documents.

13:23:41 14 And as I've already recited, and I'm not going to  
13:23:44 15 belabor this, it has been set forth in our pleadings and in our  
13:23:48 16 filings since then, that the validity of the assignments is a  
13:23:50 17 contested issue, and it's an issue on which plaintiffs bear the  
13:23:53 18 burden of proof.

13:23:53 19 THE COURT: All right. Zalman, did you say that you  
13:23:56 20 did produce the agreements?

13:24:00 21 MR. KASS: Yes, Your Honor. We produced the recovery  
13:24:02 22 agreement, and this is the one for SummaCare, and it ends 1 --  
13:24:07 23 so the total Bates number is MSP0001156. And on page 3 of 17,  
13:24:16 24 it states the considerations. It is not redacted. It's right  
13:24:20 25 there. You have the percentage. They have had this document

13:24:22 1 for over three years.

13:24:25 2 Your Honor, with respect to Emblem, we also produced  
13:24:27 3 the document. And there it's Bates No. MSP0005959. To be  
13:24:33 4 clear on the record, we did redact the purchase amount because  
13:24:36 5 that is confidential proprietary information of MSP. And if  
13:24:41 6 you want, I can get more into that. But we produced an entire  
13:24:44 7 document. They saw it had all the terms besides for one little  
13:24:48 8 part, which is a purchase amount. And if they believed that  
13:24:50 9 was an issue, this should have been resolved three years ago.

13:24:53 10 MR. OSTFELD: Well, Your Honor, the recovery  
13:24:55 11 agreement isn't what we sought for SummaCare. What we sought  
13:24:58 12 was the Claims Purchase Agreement, which has not been produced.  
13:25:01 13 For Emblem they've redacted the consideration amount. And it's  
13:25:04 14 our position, and they disagree and that's fine, but it's our  
13:25:07 15 position that they cannot assign without demonstrating good and  
13:25:12 16 adequate consideration and that the peppercorn rule won't  
13:25:14 17 accomplish that for them.

13:25:15 18 And, again, we're not bringing the discovery dispute  
13:25:18 19 to the Court. We chose not to. They chose not to provide the  
13:25:21 20 information on an issue on which they have the burden of proof.  
13:25:23 21 So our simple point is now, if they want to try to prove it,  
13:25:26 22 they have to prove it on the documents they've produced and not  
13:25:29 23 documents and information they haven't produced.

13:25:31 24 MR. KASS: Just one last thing, Your Honor. The  
13:25:33 25 Claims Purchase Agreement we produced. It's MSP0005946.

13:25:35 1 THE COURT: All right. Thank you.

13:25:45 2 (Court reporter clarification.)

13:25:54 3 THE COURT: I'm trying to decide what I need to  
13:25:56 4 decide. It does seem to me that if it was presented to me in  
13:26:09 5 the form of a request to compel production of information, I  
13:26:17 6 could decide that. I don't think I can decide the question of  
13:26:22 7 the validity of the assignment on a -- I know I couldn't decide  
13:26:27 8 it. I can only do a report and recommendation. And I'm not  
13:26:33 9 sure that I should open up summary judgment practice again in  
13:26:38 10 this case. The time for that has passed.

13:26:45 11 I want to go back and look at the transcript from the  
13:26:47 12 proceeding before Judge Bumb to see what she asked me to  
13:26:52 13 resolve, and I'll get back to you.

13:26:57 14 I would ask if you could send me Mr. Lopez's  
13:27:01 15 deposition, and I wanted to go back to the question of  
13:27:07 16 authentication.

13:27:10 17 Is it the defense position that the information  
13:27:15 18 gained in discovery or the information that's out there right  
13:27:18 19 now would be insufficient to authenticate the assignments, or  
13:27:26 20 is it something different?

13:27:28 21 MR. OSTFELD: I think our position is the information  
13:27:31 22 out there is insufficient to validate the assignments.

13:27:34 23 We don't dispute that the documents they've sent us  
13:27:38 24 are what they are. But we think what they have sent us is  
13:27:41 25 insufficient to demonstrate that the assignments are valid.

13:27:45 1 So, you know, if they --

13:27:47 2 THE COURT: Well, that's a merits decision. That's  
13:27:49 3 not a discovery decision.

13:27:51 4 MR. OSTFELD: Right.

13:27:52 5 THE COURT: And I think it would be -- well, I will  
13:27:56 6 get back to you. But I don't think it's an issue for me to  
13:27:59 7 decide or for the Special Master to decide. I don't want to  
13:28:04 8 kick the can down the road either. If Judge Bumb wanted me to  
13:28:08 9 issue a ruling on the question of the validity of the  
13:28:12 10 assignments, I would be happy to do that. But I'm not sure  
13:28:16 11 that's proper right now.

13:28:21 12 I would like to get Mr. Lopez's -- or the excerpt  
13:28:23 13 from Mr. Lopez's deposition that's been referenced in the  
13:28:28 14 letters that have been sent to me. I did not go back into the  
13:28:33 15 record to see do I have Mr. Lopez's deposition somewhere. So  
13:28:38 16 I'll ask you to send me that.

13:28:40 17 And I'd ask you to send me -- let me find the dates  
13:28:45 18 of the letters -- the May 12, 2021 letter, and the June 4, 2021  
13:29:00 19 response.

13:29:05 20 MR. KASS: Your Honor --

13:29:07 21 MR. OSTFELD: I'd be happy to do that, Your Honor.

13:29:08 22 MR. KASS: -- would it also be helpful if I submitted  
13:29:11 23 the case law that I cited with respect to the adequacy of  
13:29:15 24 consideration as to what --

13:29:17 25 THE COURT: Yeah. Yeah, you can submit that. And,



13:29:19 1 Greg, if you want to respond to that, you can.

13:29:21 2 How much time do you need, Zalman?

13:29:26 3 MR. KASS: A few days, Your Honor.

13:29:27 4 THE COURT: All right. So we'll ask for it by

13:29:29 5 August 6th.

13:29:31 6 MR. KASS: That's definitely acceptable.

13:29:33 7 THE COURT: All right. And your response, Greg, by

13:29:36 8 August 13th.

13:29:38 9 MR. OSTFELD: Thank you, Your Honor. That's fine.

13:29:40 10 THE COURT: All right.

13:29:43 11 I will say, I have looked at the case law that has

13:29:46 12 been cited in the letters that primarily come out of -- I

13:29:53 13 shouldn't say "primarily," but the cases that have been cited,

13:29:56 14 they don't deal with our situation directly, and they're very

13:30:01 15 confusing to read. But it would be helpful if I could see case

13:30:10 16 law that dealt with a factual scenario that's similar to ours.

13:30:17 17 MR. KASS: Yes, Your Honor.

13:30:18 18 THE COURT: I don't know that anything exists out

13:30:21 19 there. But the cases involving the auto insurance companies

13:30:27 20 and whether they have satisfied their obligation to pay medical

13:30:33 21 bills or not don't seem to me to be entirely what we're dealing

13:30:37 22 with here.

13:30:40 23 Anyway, having said that, I'll look forward to

13:30:43 24 getting your supplemental submissions.

13:30:49 25 In terms of discovery, I don't know that there's

anything that you're asking me to decide, so we'll let it go at that.

Is there anything else for today?

MR. KASS: I don't believe so, Your Honor.

MR. OSTFELD: Nothing further for defense.

MR. SLATER: Nothing from plaintiffs, Your Honor.

THE COURT: Okay. Well, thank you very much. I'll look forward to getting your submissions and we'll take appropriate action.

MR. SLATER: Thank you, Your Honor.

THE COURT: Which may be nothing to do. All right. Thank you.

MR. KASS: Thank you.

MR. OSTFELD: Thank you.

THE COURT: Take care. Bye-bye.

(Proceedings concluded at 1:31 p.m.)

**FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE**

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/S/John J. Kurz, RDR-RMR-CRR-CRC

August 2, 2024

Court Reporter/Transcriber

<b>MR. KASS:</b> [14] 7/6 7/9 13/13 19/8 20/13 21/21 22/24 24/20 24/22 25/3 25/6 25/17 26/4 26/13 <b>MR. OSTFELD:</b> [16] 4/12 5/5 9/24 12/15 16/7 16/9 17/3 17/5 21/5 22/10 23/21 24/4 24/21 25/9 26/5 26/14 <b>MR. SLATER:</b> [5] 4/6 6/1 6/19 26/6 26/10 <b>THE COURT:</b> [29]	<b>4th</b> [1] 1/8 <b>5</b> <b>5141</b> [1] 3/3 <b>576-7094</b> [1] 1/24 <b>5959</b> [1] 20/18 <b>6</b> <b>60</b> [1] 16/16 <b>60601</b> [1] 2/17 <b>60606</b> [1] 2/21 <b>67</b> [1] 16/16 <b>6th</b> [1] 25/5 <b>7</b> <b>701</b> [1] 1/21 <b>70130</b> [1] 1/21 <b>7094</b> [1] 1/24 <b>77</b> [1] 2/16 <b>8</b> <b>856</b> [1] 1/24 <b>9</b> <b>90277</b> [1] 2/6 <b>A</b> <b>able</b> [1] 5/16 <b>above</b> [1] 26/20 <b>above-entitled</b> [1] 26/20 <b>abundance</b> [1] 7/18 <b>acceptable</b> [2] 5/13 25/6 <b>accomplish</b> [1] 22/17 <b>acknowledged</b> [3] 8/13 10/5 11/6 <b>acknowledging</b> [1] 8/14 <b>Actavis</b> [2] 2/18 2/18 <b>action</b> [3] 1/3 16/15 26/9 <b>actual</b> [3] 8/23 10/15 11/14 <b>actually</b> [2] 7/10 10/15 <b>ADAM</b> [5] 1/17 4/6 4/20 5/25 7/5 <b>additional</b> [2] 5/1 17/19 <b>address</b> [2] 15/11 15/13 <b>addressed</b> [3] 8/7 9/4 15/5 <b>addressing</b> [1] 7/6 <b>adequacy</b> [3] 13/15 13/16 24/23 <b>adequate</b> [1] 22/16 <b>after</b> [8] 14/9 14/20 17/6 17/13 19/25 19/25 20/2 21/7 <b>afternoon</b> [1] 4/12 <b>again</b> [7] 9/11 11/15 14/2 18/13 19/23 22/18 23/9 <b>agenda</b> [4] 4/19 4/22 6/21 7/2 <b>ago</b> [3] 19/21 21/2 22/9 <b>agreement</b> [12] 11/9 11/9 11/12 11/14 20/17 20/19 21/10 21/11 21/22 22/11 22/12 22/25 <b>agreements</b> [2] 9/7 21/20 <b>ahead</b> [1] 21/4 <b>aided</b> [1] 1/25	<b>Albany</b> [1] 3/3 <b>ALFANO</b> [1] 2/12 <b>alive</b> [1] 8/3 <b>all</b> [24] 4/10 4/18 5/4 5/25 6/18 6/20 6/21 7/5 9/15 9/23 13/7 13/12 13/14 13/24 14/15 16/13 20/8 21/19 22/7 23/1 25/4 25/7 25/10 26/11 <b>allegations</b> [6] 16/21 16/23 16/25 17/1 17/2 17/7 <b>almost</b> [1] 5/22 <b>already</b> [2] 15/20 21/14 <b>also</b> [20] 3/5 4/7 7/16 7/17 8/17 10/17 10/20 11/4 11/11 11/13 14/2 14/19 17/16 18/1 19/23 20/15 20/19 21/9 22/2 24/22 <b>Although</b> [1] 6/2 <b>always</b> [1] 18/21 <b>am</b> [2] 12/13 20/2 <b>ambush</b> [2] 16/12 18/20 <b>Amended</b> [1] 16/15 <b>amount</b> [9] 8/2 10/15 14/10 14/14 20/2 21/8 22/4 22/8 22/13 <b>answer</b> [5] 19/19 19/21 19/21 20/4 20/6 <b>answers</b> [1] 16/20 <b>anticipated</b> [1] 4/9 <b>any</b> [8] 4/8 10/23 12/1 12/7 13/2 14/6 15/16 15/23 <b>anything</b> [6] 19/7 19/9 19/13 25/18 26/1 26/3 <b>Anyway</b> [1] 25/23 <b>applicable</b> [1] 12/8 <b>apply</b> [1] 7/13 <b>appropriate</b> [1] 26/9 <b>April</b> [1] 8/25 <b>are</b> [18] 4/14 4/15 4/21 7/18 7/25 11/15 13/1 13/2 13/5 15/8 15/10 16/22 18/16 21/8 21/10 23/24 23/24 23/25 <b>aren't</b> [1] 15/1 <b>argument</b> [1] 12/19 <b>arisen</b> [1] 6/22 <b>ARPS</b> [1] 2/8 <b>ask</b> [4] 23/14 24/16 24/17 25/4 <b>asked</b> [1] 23/12 <b>asking</b> [1] 26/1 <b>Asset</b> [1] 11/13 <b>assign</b> [1] 22/15 <b>assignee</b> [1] 14/5 <b>assigning</b> [1] 9/20 <b>assignment</b> [11] 8/13 8/24 9/7 11/7 15/15 15/17 15/20 15/25 20/1 20/3 23/7 <b>assignments</b> [24] 6/23 7/14 8/10 8/11 8/19 10/11 10/17 11/24 12/7 13/20 13/21 14/1 14/16 16/3	16/17 18/2 18/9 18/22 19/12 21/16 23/19 23/22 23/25 24/10 <b>assignors</b> [2] 7/18 9/14 <b>August</b> [4] 6/17 25/5 25/8 26/23 <b>August 10th</b> [1] 6/17 <b>August 13th</b> [1] 25/8 <b>August 6th</b> [1] 25/5 <b>authenticate</b> [2] 13/20 23/19 <b>authentication</b> [1] 23/16 <b>authorities</b> [1] 10/7 <b>auto</b> [1] 25/19 <b>available</b> [1] 6/13 <b>aware</b> [2] 7/17 10/11 <b>B</b> <b>back</b> [14] 5/24 11/10 14/19 15/19 18/18 18/18 19/23 20/9 20/24 23/11 23/13 23/15 24/6 24/14 <b>bare</b> [1] 10/4 <b>based</b> [2] 6/6 8/1 <b>basically</b> [1] 5/18 <b>Bates</b> [4] 20/18 20/20 21/23 22/3 <b>Beach</b> [1] 2/6 <b>bear</b> [2] 17/24 21/17 <b>bears</b> [1] 17/5 <b>because</b> [8] 5/17 7/10 8/16 8/22 12/11 16/10 21/6 22/4 <b>become</b> [1] 15/12 <b>been</b> [21] 4/19 4/21 8/5 10/9 10/11 10/24 11/17 14/5 15/23 16/11 16/11 16/12 16/22 19/9 21/15 22/9 22/12 24/13 24/14 25/12 25/13 <b>before</b> [6] 4/2 5/7 14/3 15/11 16/12 23/12 <b>begin</b> [2] 9/25 16/10 <b>beginning</b> [1] 16/18 <b>begun</b> [2] 5/6 5/11 <b>behalf</b> [3] 4/4 4/11 4/13 <b>BEHRAM</b> [1] 2/5 <b>being</b> [5] 5/2 6/10 8/12 10/2 18/16 <b>belabor</b> [1] 21/15 <b>belief</b> [3] 10/16 10/18 18/6 <b>believe</b> [11] 4/7 7/4 9/4 11/2 11/25 12/6 16/17 20/11 20/21 20/22 26/4 <b>believed</b> [2] 14/7 22/8 <b>believes</b> [1] 15/7 <b>benefit</b> [1] 5/21 <b>BERNARDO</b> [1] 2/9 <b>besides</b> [1] 22/7 <b>bills</b> [1] 25/21 <b>bit</b> [3] 5/19 9/9 12/19 <b>BOGDAN</b> [1] 3/2 <b>BOSICK</b> [1] 2/12 <b>both</b> [6] 7/15 13/4 13/8 15/8 20/9 20/10 <b>bottom</b> [1] 10/9	<b>bought</b> [3] 15/18 15/22 15/23 <b>Boulevard</b> [1] 2/3 <b>Box</b> [1] 3/3 <b>brief</b> [3] 10/3 13/18 13/19 <b>briefing</b> [2] 18/2 18/19 <b>briefly</b> [1] 16/7 <b>bring</b> [1] 21/2 <b>bringing</b> [2] 10/22 22/18 <b>brouhaha</b> [2] 6/22 12/17 <b>Building</b> [1] 1/7 <b>Bumb</b> [5] 5/7 6/11 12/21 23/12 24/8 <b>burden</b> [12] 11/16 11/21 12/23 12/24 13/1 13/3 13/9 13/10 16/18 17/24 21/18 22/20 <b>buried</b> [1] 14/15 <b>burying</b> [2] 17/13 17/14 <b>bye</b> [2] 26/15 26/15 <b>Bye-bye</b> [1] 26/15 <b>C</b> <b>calculated</b> [1] 11/22 <b>California</b> [1] 2/6 <b>Camden</b> [1] 1/8 <b>came</b> [1] 19/21 <b>Camp</b> [1] 1/21 <b>can</b> [18] 5/14 5/23 6/15 8/2 8/7 9/4 11/23 12/6 15/5 19/2 20/14 21/5 22/6 23/6 23/8 24/8 24/25 25/1 <b>can't</b> [4] 5/24 13/21 13/24 20/25 <b>cannot</b> [2] 10/16 22/15 <b>care</b> [1] 26/15 <b>case</b> [12] 10/1 10/16 12/1 12/9 15/1 18/16 18/21 19/2 23/10 24/23 25/11 25/15 <b>cases</b> [6] 8/4 15/7 15/8 15/8 25/13 25/19 <b>caution</b> [1] 7/18 <b>Centre</b> [1] 2/13 <b>certain</b> [2] 15/16 15/21 <b>certainly</b> [1] 19/2 <b>CERTIFICATE</b> [1] 26/17 <b>certification</b> [2] 18/1 18/19 <b>certify</b> [1] 26/19 <b>challenged</b> [2] 14/5 14/5 <b>change</b> [1] 15/24 <b>changes</b> [1] 13/24 <b>characterization</b> [3] 11/5 17/12 17/16 <b>Chicago</b> [2] 2/17 2/21 <b>choice</b> [3] 7/16 11/19 12/12 <b>choices</b> [2] 13/4 13/8 <b>chooses</b> [1] 10/25 <b>chose</b> [4] 12/11 18/23 22/19 22/19 <b>chosen</b> [3] 10/14 13/11 13/11 <b>CHRISTOPHER</b> [1]
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<p><b>C</b></p> <p><b>CHRISTOPHER...</b> [1] 1/17</p> <p><b>citation</b> [1] 19/13</p> <p><b>cite</b> [1] 19/15</p> <p><b>cited</b> [6] 10/1 19/16 21/7 24/23 25/12 25/13</p> <p><b>citing</b> [1] 8/4</p> <p><b>CIVIL</b> [1] 1/3</p> <p><b>claim</b> [1] 9/15</p> <p><b>claiming</b> [1] 17/1</p> <p><b>claims</b> [6] 2/4 9/16 9/20 21/11 22/12 22/25</p> <p><b>clarification</b> [1] 23/2</p> <p><b>class</b> [4] 1/22 14/4 16/15 18/1</p> <p><b>clear</b> [4] 11/18 13/14 18/1 22/4</p> <p><b>clearly</b> [2] 9/12 9/19</p> <p><b>CLEM</b> [2] 2/13 4/20</p> <p><b>Clerk</b> [1] 3/7</p> <p><b>clients</b> [3] 5/1 5/11 5/18</p> <p><b>CMC</b> [1] 21/1</p> <p><b>Co</b> [4] 1/15 1/19 1/22 2/10</p> <p><b>Co-Lead</b> [3] 1/15 1/19 1/22</p> <p><b>Coast</b> [1] 2/6</p> <p><b>Cohen</b> [1] 1/7</p> <p><b>collectively</b> [2] 2/11 2/18</p> <p><b>come</b> [4] 4/8 4/15 20/23 25/12</p> <p><b>comfortable</b> [2] 14/10 20/2</p> <p><b>Commencing</b> [1] 1/9</p> <p><b>communications</b> [1] 9/16</p> <p><b>companies</b> [2] 5/9 25/19</p> <p><b>compel</b> [5] 12/14 12/15 12/25 17/23 23/5</p> <p><b>complaining</b> [2] 14/14 20/16</p> <p><b>complaint</b> [3] 16/15 19/16 19/18</p> <p><b>computer</b> [1] 1/25</p> <p><b>computer-aided</b> [1] 1/25</p> <p><b>concluded</b> [1] 26/16</p> <p><b>conduct</b> [1] 9/13</p> <p><b>confer</b> [3] 5/2 14/21 14/22</p> <p><b>conference</b> [4] 1/5 4/19 5/7 6/11</p> <p><b>conferences</b> [1] 21/1</p> <p><b>confidential</b> [2] 20/17 22/5</p> <p><b>confidentiality</b> [1] 8/23</p> <p><b>confined</b> [2] 12/3 12/11</p> <p><b>confirm</b> [2] 6/12 6/13</p> <p><b>confusing</b> [1] 25/15</p> <p><b>CONLEE</b> [1] 1/20</p> <p><b>consideration</b> [33]</p> <p><b>considerations</b> [1] 21/24</p> <p><b>contained</b> [1] 17/19</p> <p><b>contaminated</b> [1] 15/2</p> <p><b>content</b> [1] 20/4</p> <p><b>contents</b> [1] 20/21</p> <p><b>contested</b> [11] 13/5 13/15 16/21 16/23 16/24 16/25</p>	<p>18/7 18/11 18/23 19/18 21/17</p> <p><b>contingent</b> [4] 11/7 15/15 15/22 15/24</p> <p><b>continue</b> [1] 20/10</p> <p><b>Continued</b> [2] 2/1 3/1</p> <p><b>controversy</b> [1] 11/18</p> <p><b>conversation</b> [3] 5/10 5/12 5/16</p> <p><b>conversations</b> [1] 5/11</p> <p><b>Cooper</b> [1] 1/8</p> <p><b>core</b> [1] 15/1</p> <p><b>COREY</b> [1] 2/23</p> <p><b>corporate</b> [1] 8/18</p> <p><b>correct</b> [3] 12/13 17/3 26/19</p> <p><b>correctly</b> [1] 20/22</p> <p><b>could</b> [14] 5/15 6/2 6/6 7/13 15/8 15/11 15/22 16/3 17/23 17/23 19/15 23/6 23/14 25/15</p> <p><b>couldn't</b> [1] 23/7</p> <p><b>counsel</b> [21] 1/15 1/19 1/22 2/4 2/7 2/10 2/14 2/17 2/22 2/25 3/4 5/12 5/17 8/22 14/10 14/20 19/11 19/15 20/6 20/20 20/24</p> <p><b>COURT</b> [13] 1/1 1/23 7/21 7/24 9/10 10/19 12/10 18/25 19/10 22/19 23/2 26/17 26/24</p> <p><b>Courthouse</b> [1] 1/7</p> <p><b>Courtroom</b> [1] 3/6</p> <p><b>CRC</b> [1] 26/23</p> <p><b>create</b> [1] 16/6</p> <p><b>CRR</b> [1] 26/23</p> <p><b>D</b></p> <p><b>damages</b> [1] 4/23</p> <p><b>data</b> [1] 9/15</p> <p><b>date</b> [1] 20/6</p> <p><b>dated</b> [1] 4/20</p> <p><b>dates</b> [1] 24/17</p> <p><b>DAVID</b> [1] 1/14</p> <p><b>DAVIDSON</b> [1] 2/8</p> <p><b>days</b> [2] 6/17 25/3</p> <p><b>DC</b> [1] 2/24</p> <p><b>de</b> [1] 2/3</p> <p><b>deal</b> [4] 8/11 9/21 14/11 25/14</p> <p><b>dealing</b> [1] 25/21</p> <p><b>deals</b> [3] 6/21 7/25 8/1</p> <p><b>dealt</b> [2] 7/11 25/16</p> <p><b>Decertification</b> [2] 18/6 18/11</p> <p><b>decertify</b> [1] 14/4</p> <p><b>decide</b> [10] 7/24 7/25 23/3 23/4 23/6 23/6 23/7 24/7 24/7 26/1</p> <p><b>decision</b> [5] 10/12 11/23 12/4 24/2 24/3</p> <p><b>decisions</b> [1] 11/16</p> <p><b>declined</b> [3] 11/11 11/12 11/15</p> <p><b>deeper</b> [1] 8/15</p> <p><b>defendant</b> [3] 2/14 2/22</p>	<p>16/21</p> <p><b>defendants</b> [11] 2/10 2/17 4/11 4/13 4/25 6/7 6/15 8/24 12/24 13/19 16/25</p> <p><b>defendants'</b> [1] 14/4</p> <p><b>defense</b> [7] 12/13 14/19 19/11 19/15 20/20 23/17 26/5</p> <p><b>defer</b> [1] 18/25</p> <p><b>definitely</b> [2] 16/11 25/6</p> <p><b>Delaware</b> [3] 7/16 10/6 12/7</p> <p><b>demonstrate</b> [1] 23/25</p> <p><b>demonstrating</b> [1] 22/15</p> <p><b>deposition</b> [9] 8/17 14/8 14/22 17/13 19/24 19/25 23/15 24/13 24/15</p> <p><b>depositions</b> [1] 9/17</p> <p><b>Deputy</b> [1] 3/6</p> <p><b>describe</b> [1] 20/10</p> <p><b>determination</b> [1] 18/9</p> <p><b>determine</b> [1] 7/21</p> <p><b>did</b> [15] 5/4 5/15 7/5 8/23 10/2 12/13 12/15 12/16 14/17 16/24 17/17 21/19 21/20 22/4 24/14</p> <p><b>didn't</b> [5] 5/17 8/20 12/21 20/20 20/21</p> <p><b>died</b> [1] 14/23</p> <p><b>different</b> [1] 23/20</p> <p><b>directly</b> [1] 25/14</p> <p><b>disagree</b> [4] 11/4 17/12 17/16 22/14</p> <p><b>disclose</b> [7] 8/21 8/23 10/13 10/15 11/20 12/11 17/22</p> <p><b>disclosed</b> [2] 9/1 20/1</p> <p><b>disclosing</b> [2] 14/10 20/2</p> <p><b>disclosure</b> [2] 10/23 17/20</p> <p><b>discovery</b> [13] 1/5 4/19 6/10 10/24 12/5 12/12 17/5 17/6 17/9 22/18 23/18 24/3 25/25</p> <p><b>discussions</b> [1] 6/17</p> <p><b>dispute</b> [3] 18/3 22/18 23/23</p> <p><b>disputed</b> [1] 11/2</p> <p><b>distract</b> [1] 16/6</p> <p><b>DISTRICT</b> [2] 1/1 1/1</p> <p><b>document</b> [5] 9/2 20/21 21/25 22/3 22/7</p> <p><b>documentation</b> [1] 10/3</p> <p><b>documents</b> [16] 9/16 10/12 12/4 14/15 14/17 14/18 14/20 17/15 17/18 17/19 20/16 20/23 21/13 22/22 22/23 23/23</p> <p><b>does</b> [2] 16/1 23/4</p> <p><b>doesn't</b> [2] 8/16 19/17</p> <p><b>doing</b> [1] 10/17</p> <p><b>dollar</b> [1] 20/2</p> <p><b>done</b> [3] 7/12 15/20 20/22</p> <p><b>down</b> [1] 24/8</p> <p><b>Drive</b> [1] 2/16</p> <p><b>during</b> [1] 6/11</p>	<p><b>E</b></p> <p><b>each</b> [2] 16/20 16/20</p> <p><b>easiest</b> [1] 9/20</p> <p><b>easily</b> [2] 8/7 9/5</p> <p><b>easy</b> [1] 6/12</p> <p><b>Economic</b> [1] 1/22</p> <p><b>eight</b> [1] 5/6</p> <p><b>Eisenhower</b> [1] 1/18</p> <p><b>either</b> [2] 18/4 24/8</p> <p><b>elaborate</b> [2] 5/4 7/5</p> <p><b>elected</b> [1] 10/21</p> <p><b>else</b> [3] 19/7 19/17 26/3</p> <p><b>Emblem</b> [6] 8/21 11/13 20/3 21/10 22/2 22/13</p> <p><b>end</b> [1] 14/8</p> <p><b>ends</b> [1] 21/22</p> <p><b>engage</b> [1] 11/1</p> <p><b>enter</b> [1] 16/2</p> <p><b>entertain</b> [1] 10/25</p> <p><b>entertains</b> [1] 12/9</p> <p><b>entire</b> [2] 9/14 22/6</p> <p><b>entirely</b> [1] 25/21</p> <p><b>entitled</b> [4] 21/8 21/9 21/10 26/20</p> <p><b>especially</b> [2] 6/10 10/22</p> <p><b>ESQUIRE</b> [15] 1/13 1/14 1/17 1/17 1/20 2/2 2/5 2/8 2/9 2/13 2/16 2/20 2/23 3/2 3/7</p> <p><b>essentially</b> [1] 17/1</p> <p><b>establish</b> [2] 15/9 15/10</p> <p><b>eve</b> [3] 14/24 19/10 21/3</p> <p><b>even</b> [6] 5/16 9/2 9/10 9/13 13/18 15/11</p> <p><b>every</b> [5] 7/19 8/11 8/13 8/19 21/1</p> <p><b>everybody</b> [1] 19/12</p> <p><b>everything</b> [2] 19/17 19/17</p> <p><b>evidence</b> [2] 8/10 11/19</p> <p><b>exact</b> [1] 8/21</p> <p><b>excerpt</b> [1] 24/12</p> <p><b>excited</b> [1] 12/19</p> <p><b>exists</b> [1] 25/18</p> <p><b>expressed</b> [2] 12/19 12/22</p> <p><b>expressing</b> [1] 18/10</p> <p><b>expression</b> [1] 18/6</p> <p><b>expressly</b> [1] 17/18</p> <p><b>extensive</b> [1] 17/6</p> <p><b>extent</b> [1] 6/10</p> <p><b>F</b></p> <p><b>face</b> [3] 11/18 16/13 16/21</p> <p><b>fact</b> [6] 8/1 8/20 10/5 11/2 15/21 19/19</p> <p><b>facts</b> [1] 16/16</p> <p><b>factual</b> [1] 25/16</p> <p><b>fairly</b> [3] 4/23 6/7 6/12</p> <p><b>FALKENBERG</b> [1] 2/20</p> <p><b>fall</b> [1] 19/22</p> <p><b>familiar</b> [1] 9/25</p> <p><b>FEDERAL</b> [1] 26/17</p> <p><b>few</b> [3] 6/3 19/21 25/3</p> <p><b>file</b> [1] 9/6</p> <p><b>filed</b> [1] 19/22</p>	<p><b>filing</b> [1] 7/9</p> <p><b>filings</b> [1] 21/16</p> <p><b>financial</b> [1] 5/8</p> <p><b>find</b> [1] 24/17</p> <p><b>fine</b> [3] 14/11 22/14 25/9</p> <p><b>first</b> [3] 4/23 13/14 19/2</p> <p><b>fixed</b> [1] 11/10</p> <p><b>FLOM</b> [1] 2/8</p> <p><b>Floor</b> [1] 2/13</p> <p><b>Florida</b> [5] 2/3 7/15 8/4 10/6 12/7</p> <p><b>follows</b> [1] 4/3</p> <p><b>foregoing</b> [1] 26/19</p> <p><b>forgot</b> [1] 18/4</p> <p><b>forgotten</b> [1] 18/5</p> <p><b>form</b> [2] 5/13 23/5</p> <p><b>forth</b> [3] 4/14 16/16 21/15</p> <p><b>forward</b> [3] 11/20 25/23 26/8</p> <p><b>found</b> [2] 14/3 14/3</p> <p><b>free</b> [1] 7/25</p> <p><b>FREEMAN</b> [1] 1/16</p> <p><b>further</b> [1] 26/5</p> <p><b>future</b> [1] 6/7</p> <p><b>G</b></p> <p><b>gained</b> [1] 23/18</p> <p><b>GEDDIS</b> [1] 1/17</p> <p><b>George</b> [5] 8/17 14/8 14/9 19/24 19/25</p> <p><b>getting</b> [4] 13/5 19/5 25/24 26/8</p> <p><b>give</b> [3] 8/9 10/14 13/11</p> <p><b>given</b> [2] 7/3 12/5</p> <p><b>good</b> [3] 4/12 8/12 22/15</p> <p><b>GORDON</b> [1] 2/12</p> <p><b>got</b> [2] 5/22 20/8</p> <p><b>greatest</b> [2] 18/8 18/14</p> <p><b>GREENBERG</b> [1] 2/15</p> <p><b>Greg</b> [9] 4/13 4/17 5/4 6/5 9/23 12/13 21/4 25/1 25/7</p> <p><b>GREGORY</b> [1] 2/16</p> <p><b>gross</b> [2] 5/8 6/14</p> <p><b>H</b></p> <p><b>happened</b> [1] 15/18</p> <p><b>happy</b> [6] 10/7 14/21 14/22 15/7 24/10 24/21</p> <p><b>HARDING</b> [1] 3/2</p> <p><b>has</b> [15] 4/19 6/22 8/5 8/13 10/20 14/2 15/11 16/12 16/21 19/4 19/9 21/15 22/12 23/10 25/11</p> <p><b>hasn't</b> [1] 10/24</p> <p><b>have</b> [43]</p> <p><b>haven't</b> [1] 22/23</p> <p><b>having</b> [1] 25/23</p> <p><b>he</b> [17] 8/18 8/20 8/20 8/22 8/23 9/1 11/8 11/11 14/3 14/11 14/12 18/11 18/14 18/17 19/25 20/1 20/2</p> <p><b>He's</b> [1] 18/15</p> <p><b>Health</b> [1] 21/10</p> <p><b>Healthcare</b> [1] 2/11</p>
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<b>H</b> heard [1] 16/7 hearing [3] 13/17 16/13 19/11 held [1] 4/1 Hello [1] 4/6 helpful [2] 24/22 25/15 here [6] 10/8 13/4 16/11 18/20 18/21 25/22 hereby [1] 8/13 hey [2] 14/15 20/24 Highway [1] 2/6 his [3] 18/6 18/10 18/14 history [1] 17/5 HONIK [2] 1/13 1/13 Honor [56] HONORABLE [3] 1/10 3/7 4/2 hope [2] 6/2 6/6 hopefully [1] 6/15 Huahai [2] 2/10 2/11 human [1] 18/15 Humana [1] 2/22	<b>JESSICA</b> [1] 2/8 <b>John</b> [3] 1/23 1/23 26/23 <b>Jorge</b> [2] 11/5 17/11 <b>Judge</b> [17] 4/12 5/7 6/1 6/11 9/24 12/20 14/2 14/3 16/9 18/5 18/8 18/10 18/14 20/25 21/5 23/12 24/8 <b>judgment</b> [20] 7/3 7/10 8/8 9/5 9/22 10/20 10/21 10/22 10/25 12/2 12/3 12/10 12/16 13/2 13/3 15/6 15/9 19/1 19/4 23/9 <b>Judicial</b> [1] 3/7 <b>July</b> [2] 1/9 4/20 <b>July 29</b> [1] 4/20 <b>June</b> [1] 24/18 <b>June 4</b> [1] 24/18 <b>jury</b> [5] 7/11 7/24 10/18 12/9 16/6 <b>just</b> [11] 5/18 7/18 8/9 9/8 9/8 9/13 14/23 15/13 15/13 19/17 22/24	leave [1] 7/3 legal [2] 7/10 15/5 Leon [1] 2/3 less [1] 7/24 let [2] 24/17 26/1 Let's [1] 4/18 letter [15] 4/25 5/5 6/7 6/16 7/2 10/3 14/13 14/19 17/8 17/13 17/17 20/8 20/10 21/12 24/18 letters [6] 4/14 4/20 4/22 24/14 24/18 25/12 <b>LIABILITY</b> [1] 1/5 life [1] 6/24 like [8] 6/2 6/5 6/16 11/22 19/17 20/13 20/21 24/12 liked [1] 12/20 line [1] 10/9 lineup [1] 4/9 list [1] 5/6 litigation [3] 1/5 9/14 15/12 little [7] 5/19 5/20 8/2 8/9 12/18 12/20 22/7 <b>LLC</b> [6] 1/13 1/16 1/20 2/4 2/11 2/18 <b>LLP</b> [8] 2/2 2/5 2/8 2/12 2/15 2/20 2/23 3/2 located [1] 7/18 long [4] 7/22 8/4 10/10 16/12 look [7] 8/10 13/18 16/13 16/20 23/11 25/23 26/8 looked [2] 7/15 25/11 Lopez [9] 8/18 10/5 11/5 11/6 14/9 17/11 17/15 19/24 19/25 Lopez's [5] 14/8 23/14 24/12 24/13 24/15 Loretta [1] 3/7 <b>LOSARTAN</b> [1] 1/3 Loss [1] 1/22 lot [2] 9/12 18/16 Louisiana [1] 1/21 love [1] 12/21 Ltd [2] 2/11 2/17	<b>MAZIE</b> [1] 1/16 <b>MAZZOTTI</b> [1] 3/2 md [1] 1/4 MDL [2] 1/15 1/19 me [15] 4/23 6/12 14/11 23/4 23/4 23/12 23/14 24/6 24/8 24/14 24/16 24/17 24/17 25/21 26/1 <b>MEAGHER</b> [1] 2/8 mean [4] 7/13 19/17 20/9 20/13 meant [1] 6/5 mechanical [1] 1/25 medical [1] 25/20 meet [5] 5/1 13/9 13/10 14/20 14/22 memorialize [1] 21/12 merits [2] 18/8 24/2 <b>MESTRE</b> [1] 2/2 Miami [1] 2/3 minute [2] 13/23 21/3 missing [2] 6/25 16/4 mistaken [1] 18/14 Mitchell [1] 1/7 Monroe [1] 2/21 months [3] 5/22 6/4 19/21 more [11] 5/19 5/21 9/12 12/5 12/20 13/2 14/17 14/17 20/23 21/5 22/6 more into [1] 22/6 mortal [1] 18/15 motion [8] 7/9 8/7 9/5 9/21 10/22 14/4 15/6 15/9 move [7] 7/3 12/14 12/15 12/16 12/25 13/1 13/2 moved [1] 17/23 Mr. [18] 10/1 10/5 11/4 11/6 14/8 14/9 15/7 15/14 17/15 17/16 19/24 20/3 20/16 21/7 23/14 24/12 24/13 24/15 Mr. George [1] 14/9 Mr. Kass [2] 10/1 21/7 Mr. Kass's [2] 11/4 17/16 Mr. Lopez [3] 10/5 11/6 17/15 Mr. Lopez's [4] 23/14 24/12 24/13 24/15 Mr. Ostfeld [6] 14/8 15/7 15/14 19/24 20/3 20/16 MSP [9] 2/4 6/22 9/12 11/9 12/3 13/24 15/18 15/21 22/5 MSP's [2] 8/18 14/4 MSP0001156 [1] 21/23 MSP0005946 [1] 22/25 MSP0005959 [1] 22/3 much [4] 7/24 9/9 25/2 26/7 muddled [1] 20/8 my [2] 17/19 21/12 Mylan [1] 2/14 myself [2] 12/19 12/22	<b>N</b> narrow [2] 4/23 6/9 narrowing [1] 4/24 near [1] 6/7 necessarily [3] 12/21 18/17 18/18 need [7] 5/10 5/18 8/15 15/10 16/2 23/3 25/2 needed [1] 20/22 net [2] 5/9 6/14 never [1] 10/15 new [12] 1/1 1/8 1/18 1/21 2/10 2/10 3/3 7/17 10/22 10/23 17/14 17/18 next [2] 6/3 6/21 njd.uscourts.gov [1] 1/23 no [9] 8/15 16/11 16/11 18/20 18/20 19/12 20/18 20/20 22/3 nobody [1] 13/20 not [41] noted [2] 18/5 19/20 nothing [5] 9/9 12/5 26/5 26/6 26/11 now [13] 4/18 5/6 5/19 7/2 9/17 13/5 14/11 14/24 19/5 21/2 22/21 23/19 24/11 number [3] 1/3 8/21 21/23 NW [1] 2/24
<b>I</b> I'd [3] 10/7 24/17 24/21 I'll [8] 4/13 7/6 9/25 14/11 23/13 24/16 25/23 26/7 I'm [13] 4/7 4/22 6/25 7/17 9/25 14/9 15/7 16/24 20/4 21/14 23/3 23/8 24/10 I've [2] 17/8 21/14 identify [1] 11/11 Illinois [2] 2/17 2/21 Inc [5] 2/11 2/11 2/14 2/18 2/18 inclined [1] 9/10 indicated [2] 4/25 5/7 Industries [1] 2/17 information [19] 5/8 5/18 6/12 10/23 12/14 12/16 16/2 16/4 17/2 17/7 17/10 20/23 22/5 22/20 22/23 23/5 23/17 23/18 23/21 inject [1] 14/25 insufficient [3] 23/19 23/22 23/25 insurance [1] 25/19 internal [1] 9/16 interrupt [1] 16/24 introduce [2] 13/21 15/1 involve [1] 10/23 involving [1] 25/19 IRBESARTAN [1] 1/4 irrelevant [1] 15/22 isn't [1] 22/11 issue [59] issues [3] 4/8 15/1 18/11 items [3] 4/14 4/15 5/6 its [1] 6/24 IVES [2] 2/20 2/20	<b>K</b> <b>KANNER</b> [1] 1/20 <b>KASS</b> [4] 2/2 4/7 10/1 21/7 Kass's [2] 11/4 17/16 <b>KATZ</b> [1] 1/16 keep [1] 19/11 kick [1] 24/8 <b>KIRSTIN</b> [1] 2/20 <b>KIRTLAND</b> [1] 2/5 knew [4] 8/22 18/22 19/12 19/13 know [17] 6/3 6/5 8/25 9/10 9/12 9/13 12/18 12/21 13/7 16/14 18/15 18/25 21/8 23/7 24/1 25/18 25/25 knowledge [3] 17/1 17/6 19/20 known [2] 8/25 18/21 Kugler [6] 3/7 14/2 14/3 18/8 18/10 18/14 Kugler's [1] 18/5 Kurz [3] 1/23 1/23 26/23	<b>L</b> lack [2] 17/1 17/6 lacked [1] 19/20 laid [1] 17/8 language [1] 8/14 Larry [1] 3/6 last [6] 13/17 13/23 13/23 16/12 21/3 22/24 late [1] 21/3 later [5] 14/12 14/13 15/18 15/21 20/6 law [15] 3/7 7/4 7/16 8/16 9/21 10/1 10/3 10/6 12/7 12/8 15/9 19/2 24/23 25/11 25/16 laws [2] 7/12 7/15 Lead [3] 1/15 1/19 1/22 least [2] 5/20 16/4	<b>M</b> Macleods [1] 2/25 MacStravic [1] 3/6 made [10] 7/23 8/12 10/12 11/22 12/4 12/12 13/4 13/8 18/1 18/17 make [5] 7/25 10/16 12/9 12/22 13/14 Manhattan [1] 2/9 many [1] 20/15 Market [1] 1/14 <b>MARTIN</b> [1] 3/2 <b>MASTER</b> [3] 1/11 4/2 24/7 matter [2] 9/21 26/20 matters [1] 4/21 may [5] 4/15 13/13 16/7 24/18 26/11 May 12 [1] 24/18	<b>O</b> obligation [1] 25/20 observation [1] 9/8 obviously [1] 11/1 Official [2] 1/23 26/17 Oh [1] 15/13 Ohio [1] 7/17 okay [5] 7/8 14/11 17/4 20/20 26/7 one [14] 2/9 2/13 7/19 8/11 8/19 9/8 10/23 15/13 15/14 18/15 21/5 21/22 22/7 22/24 only [6] 6/9 9/11 19/15 19/21 21/6 23/8 open [1] 23/9 Opinion [2] 18/6 18/12 oppose [2] 10/22 21/12 opposed [2] 6/3 17/18 original [1] 11/7 Orleans [1] 1/21 <b>OSTFELD</b> [8] 2/16 4/13 14/8 15/7 15/14 19/24 20/3 20/16 other [10] 4/8 4/15 6/14 9/8 12/7 14/14 15/8 15/13 15/23 21/1 others [1] 4/15 our [28] ours [1] 25/16 out [11] 5/5 5/17 5/23 14/23 17/6 17/8 20/15 23/18 23/22 25/12 25/18 over [2] 6/22 22/1 own [3] 6/24 7/25 8/1

<b>O</b>	<b>potentially</b> [2] 5/20 6/8 <b>practice</b> [1] 23/9 <b>prejudicial</b> [1] 15/3 <b>preparing</b> [1] 9/18 <b>present</b> [2] 3/5 19/2 <b>presented</b> [1] 23/4 <b>preview</b> [1] 8/9 <b>primarily</b> [2] 25/12 25/13 <b>Princeton</b> [1] 2/11 <b>prior</b> [2] 8/21 18/19 <b>proceed</b> [1] 19/6 <b>proceeding</b> [1] 23/12 <b>proceedings</b> [4] 1/25 4/1 26/16 26/20 <b>produce</b> [6] 13/11 14/17 14/17 17/18 21/13 21/20 <b>produced</b> [13] 1/25 9/15 9/15 12/4 20/17 20/19 21/21 22/2 22/6 22/12 22/22 22/23 22/25 <b>production</b> [2] 12/14 23/5 <b>PRODUCTS</b> [1] 1/4 <b>proof</b> [11] 11/17 11/21 12/23 12/24 13/4 13/9 13/10 16/19 17/25 21/18 22/20 <b>proofs</b> [1] 15/10 <b>proper</b> [1] 24/11 <b>proprietary</b> [1] 22/5 <b>prospect</b> [1] 5/2 <b>prove</b> [6] 11/23 12/6 13/25 18/22 22/21 22/22 <b>provide</b> [4] 10/2 11/12 11/15 22/19 <b>provided</b> [3] 10/7 10/24 17/10 <b>provisions</b> [1] 7/16 <b>publicly</b> [1] 6/13 <b>punitive</b> [1] 4/23 <b>purchase</b> [10] 11/9 11/13 15/15 20/17 21/9 21/11 22/4 22/8 22/12 22/25 <b>purchased</b> [1] 11/10 <b>purposes</b> [1] 11/14 <b>purposes</b> [1] 20/4 <b>put</b> [1] 11/20	<b>reached</b> [1] 5/14 <b>read</b> [3] 10/7 18/4 25/15 <b>ready</b> [2] 13/5 19/5 <b>real</b> [1] 14/7 <b>really</b> [1] 19/5 <b>reason</b> [1] 10/14 <b>reasonable</b> [1] 6/1 <b>received</b> [1] 9/19 <b>recitation</b> [2] 10/4 10/5 <b>recitations</b> [1] 11/24 <b>recited</b> [1] 21/14 <b>recommendation</b> [1] 23/8 <b>record</b> [7] 10/8 14/9 14/12 20/5 22/4 24/15 26/20 <b>recorded</b> [1] 1/25 <b>recovery</b> [9] 2/4 6/22 9/1 15/16 15/22 15/24 20/19 21/21 22/10 <b>redact</b> [1] 22/4 <b>redacted</b> [3] 12/14 21/24 22/13 <b>redactions</b> [1] 20/22 <b>Redondo</b> [1] 2/6 <b>referenced</b> [1] 24/13 <b>referencing</b> [2] 18/17 18/18 <b>referred</b> [1] 12/17 <b>referring</b> [1] 10/1 <b>regarding</b> [2] 5/8 10/2 <b>REIN</b> [1] 2/23 <b>rejected</b> [1] 17/19 <b>related</b> [1] 14/15 <b>relevant</b> [2] 9/15 15/1 <b>remain</b> [1] 11/17 <b>remark</b> [1] 18/9 <b>remedy</b> [1] 20/23 <b>remote</b> [1] 4/1 <b>reopening</b> [1] 14/22 <b>report</b> [2] 6/16 23/8 <b>reporter</b> [3] 1/23 23/2 26/24 <b>REPORTER'S</b> [1] 26/17 <b>Reporter/Transcriber</b> [1] 26/24 <b>representative</b> [1] 8/18 <b>represented</b> [1] 6/11 <b>represents</b> [1] 6/13 <b>request</b> [5] 17/13 17/14 17/19 21/13 23/5 <b>require</b> [2] 8/16 18/22 <b>required</b> [4] 12/25 13/1 13/2 17/22 <b>research</b> [1] 7/12 <b>reserve</b> [1] 20/5 <b>resolution</b> [2] 5/3 5/13 <b>resolvable</b> [3] 5/19 5/20 6/9 <b>resolve</b> [5] 6/15 15/11 20/25 21/2 23/13 <b>resolved</b> [3] 6/3 6/6 22/9 <b>respect</b> [8] 7/9 15/14 16/5 18/8 18/13 18/14 22/2 24/23 <b>respectfully</b> [4] 11/4 13/7 17/12 18/25	<b>respond</b> [2] 17/2 25/1 <b>responded</b> [1] 14/16 <b>response</b> [3] 20/8 24/19 25/7 <b>responsive</b> [1] 17/17 <b>RET</b> [3] 1/10 3/7 4/2 <b>return</b> [1] 9/20 <b>revenues</b> [2] 5/8 6/14 <b>reviewing</b> [1] 14/20 <b>revisit</b> [1] 20/5 <b>RICHARD</b> [1] 2/9 <b>RIDDELL</b> [1] 3/2 <b>right</b> [31] <b>rightly</b> [1] 19/20 <b>RIVERO</b> [1] 2/2 <b>RMB</b> [1] 1/4 <b>RMR</b> [1] 26/23 <b>road</b> [1] 24/8 <b>Robert</b> [1] 3/7 <b>Roseland</b> [1] 1/18 <b>ROSEMARIE</b> [1] 3/2 <b>RUBEN</b> [1] 1/13 <b>rule</b> [1] 22/16 <b>ruling</b> [2] 14/3 24/9	<b>sideshow</b> [1] 15/12 <b>similar</b> [1] 25/16 <b>simple</b> [2] 9/8 22/21 <b>simply</b> [3] 18/17 19/16 19/20 <b>since</b> [2] 8/25 21/16 <b>single</b> [4] 7/19 8/11 8/13 8/19 <b>situation</b> [1] 25/14 <b>SKADDEN</b> [1] 2/8 <b>SLATE</b> [1] 2/8 <b>SLATER</b> [4] 1/16 1/17 4/6 4/20 <b>Smith</b> [1] 3/7 <b>so</b> [25] 5/18 5/20 5/22 6/15 6/17 7/7 8/6 8/13 9/4 9/25 10/17 10/21 13/14 14/24 15/4 16/10 16/21 18/20 21/23 22/21 24/1 24/15 25/4 26/1 26/4 <b>Solco</b> [1] 2/11 <b>some</b> [1] 17/18 <b>something</b> [5] 7/1 7/20 9/19 17/21 23/20 <b>sometimes</b> [1] 12/18 <b>somewhere</b> [1] 24/15 <b>sorry</b> [1] 16/24 <b>sought</b> [3] 6/10 22/11 22/11 <b>sounds</b> [2] 6/1 11/22 <b>South</b> [1] 2/6 <b>speak</b> [2] 4/15 5/1 <b>speaking</b> [6] 4/4 4/7 4/11 4/13 8/22 14/10 <b>SPECIAL</b> [3] 1/11 4/2 24/7 <b>specific</b> [2] 9/6 19/13 <b>St</b> [1] 2/24 <b>standing</b> [1] 19/16 <b>STANOCH</b> [1] 1/14 <b>started</b> [1] 4/18 <b>stated</b> [2] 14/12 19/16 <b>statement</b> [2] 7/22 18/17 <b>states</b> [5] 1/1 7/12 7/17 7/19 21/24 <b>stating</b> [2] 9/2 13/20 <b>status</b> [2] 6/16 14/4 <b>stenography</b> [1] 1/25 <b>still</b> [3] 8/3 8/4 17/6 <b>stipulation</b> [1] 16/3 <b>stipulations</b> [1] 17/9 <b>strategic</b> [4] 11/22 12/12 13/4 13/8 <b>stray</b> [1] 18/9 <b>Street</b> [4] 1/14 1/21 2/21 3/3 <b>Streets</b> [1] 1/8 <b>stuck</b> [1] 13/8 <b>subject</b> [1] 18/2 <b>submissions</b> [2] 25/24 26/8 <b>submit</b> [5] 15/7 15/8 20/14 20/14 24/25 <b>submitted</b> [3] 8/6 13/19 24/22 <b>subsequent</b> [2] 11/9 11/9 <b>subsequently</b> [2] 11/12
<b>P</b>	<b>Q</b>	<b>S</b>		
<b>p.m</b> [3] 1/9 4/3 26/16 <b>P.O</b> [1] 3/3 <b>Pacific</b> [1] 2/6 <b>PACKARD</b> [1] 2/5 <b>page</b> [1] 21/23 <b>page 3</b> [1] 21/23 <b>pages</b> [1] 17/10 <b>paid</b> [6] 9/12 10/6 10/15 11/8 11/14 20/3 <b>paper</b> [1] 18/16 <b>paragraphs</b> [1] 16/16 <b>PAREKH</b> [1] 2/5 <b>Parkway</b> [1] 1/18 <b>part</b> [3] 16/18 18/21 22/8 <b>partially</b> [1] 21/6 <b>parties</b> [2] 5/21 7/25 <b>Party</b> [1] 1/22 <b>passed</b> [4] 10/20 19/4 19/9 23/10 <b>past</b> [1] 19/22 <b>pay</b> [1] 25/20 <b>Payor</b> [1] 1/22 <b>Pennsylvania</b> [2] 1/15 2/14 <b>peppercorn</b> [7] 8/3 8/5 9/13 10/2 11/25 12/8 22/16 <b>peppercorn's</b> [2] 9/12 10/4 <b>percentage</b> [5] 9/1 9/1 9/2 15/16 21/25 <b>perhaps</b> [2] 4/24 12/19 <b>person</b> [1] 15/23 <b>pertained</b> [1] 17/9 <b>Pharma</b> [2] 2/18 2/25 <b>Pharmaceutical</b> [3] 2/10 2/11 2/17 <b>Pharmaceuticals</b> [2] 2/14 2/18 <b>Philadelphia</b> [1] 1/15 <b>PIETRAGALLO</b> [1] 2/12 <b>Pittsburgh</b> [1] 2/14 <b>placed</b> [1] 18/19 <b>Plaintiff</b> [1] 3/4 <b>plaintiffs</b> [19] 1/15 1/19 2/7 4/5 5/2 5/7 5/16 7/2 10/1 10/11 12/23 13/2 13/9 16/2 16/15 18/21 21/12 21/17 26/6 <b>plaintiffs'</b> [3] 5/12 5/17 20/24 <b>planet</b> [1] 15/23 <b>pleadings</b> [5] 11/18 16/14 16/22 18/18 21/15 <b>point</b> [6] 12/22 14/6 16/10 17/23 20/15 22/21 <b>policies</b> [1] 9/17 <b>Ponce</b> [1] 2/3 <b>position</b> [8] 8/7 15/4 17/21 21/8 22/14 22/15 23/17 23/21	<b>question</b> [5] 4/22 11/2 23/6 23/15 24/9 <b>questioning</b> [1] 17/10 <b>questions</b> [1] 20/7 <b>quickly</b> [1] 9/5 <b>quoted</b> [2] 21/6 21/6	<b>said</b> [15] 6/7 11/5 11/8 14/3 14/9 14/9 14/11 14/19 15/14 19/20 19/25 19/25 20/2 20/3 25/23 <b>SAK</b> [1] 1/4 <b>sat</b> [1] 9/17 <b>satisfied</b> [1] 25/20 <b>saw</b> [1] 22/7 <b>say</b> [11] 12/18 17/17 18/4 18/7 18/13 20/24 21/5 21/7 21/19 25/11 25/13 <b>saying</b> [3] 8/4 13/7 19/11 <b>says</b> [4] 7/19 8/11 14/15 20/11 <b>scenario</b> [1] 25/16 <b>scope</b> [1] 6/9 <b>secrets</b> [1] 8/23 <b>section</b> [1] 21/7 <b>see</b> [5] 5/12 5/15 23/12 24/15 25/15 <b>seek</b> [1] 10/21 <b>seem</b> [3] 6/12 23/4 25/21 <b>seems</b> [3] 4/23 6/24 6/25 <b>send</b> [3] 23/14 24/16 24/17 <b>sent</b> [4] 17/13 23/23 23/24 24/14 <b>Series</b> [1] 2/4 <b>serves</b> [1] 20/9 <b>set</b> [5] 4/14 4/19 5/5 16/16 21/15 <b>sets</b> [1] 17/8 <b>she</b> [2] 12/21 23/12 <b>should</b> [8] 7/11 12/3 12/10 13/8 13/10 19/6 22/9 23/9 <b>shouldn't</b> [1] 25/13 <b>show</b> [2] 11/2 16/1 <b>sic</b> [1] 8/17 <b>sideline</b> [1] 15/3 <b>sides</b> [1] 15/8		

<p><b>S</b>  subsequently... [1] 20/17  substantial [1] 6/25  sudden [1] 13/24  sufficiency [7] 7/14 7/20  7/23 9/11 10/10 10/11  13/16  sufficient [4] 8/6 8/12  10/2 10/6  suggested [2] 7/2 12/2  Suite [6] 1/14 1/18 2/3  2/9 2/16 2/21  sum [3] 11/11 11/11  15/21  SummaCare [10] 8/24  11/5 11/10 15/14 15/19  16/5 20/1 21/11 21/22  22/11  summary [20] 7/3 7/10  8/8 9/5 9/21 10/20 10/21  10/22 10/25 12/2 12/3  12/10 12/16 13/1 13/3  15/6 15/9 19/1 19/4 23/9  supplemental [1] 25/24  support [1] 16/17  sure [4] 4/8 19/8 23/9  24/10  switcheroo [4] 13/24  16/10 16/11 18/20</p>	<p>5/19 5/20 5/23 11/23 12/1  12/17 18/16 19/4 19/9  20/9 23/6 23/21 23/24  24/5 24/6  Third [2] 1/22 16/15  Third-Amended [1]  16/15  Third-Party [1] 1/22  this [60]  THOMAS [2] 1/10 4/2  thousands [1] 9/16  three [7] 5/22 6/4 14/24  17/8 21/2 22/1 22/9  through [4] 11/24 11/24  12/8 16/16  throughout [1] 9/14  time [14] 4/18 5/1 5/19  5/21 5/23 10/10 10/20  11/7 14/6 15/20 19/4 19/9  23/10 25/2  today [4] 4/5 6/17 20/4  26/3  TODD [1] 2/9  too [1] 21/3  took [1] 17/21  total [1] 21/23  trade [1] 8/23  Transcriber [1] 26/24  transcript [3] 1/25 23/11  26/19  transcription [1] 1/25  TRAURIG [1] 2/15  trial [20] 5/22 9/18 10/3  11/3 12/1 12/3 13/5 13/6  13/18 13/18 13/21 14/25  14/25 15/3 15/12 16/6  18/3 19/5 19/10 21/3  TRISCHLER [2] 2/13  4/21  try [7] 5/15 12/9 14/25  14/25 18/24 19/1 22/21  trying [4] 12/22 16/5  20/10 23/3  twice [1] 9/17  two [2] 4/14 4/21</p>	<p><b>V</b>  valid [1] 23/25  validate [1] 23/22  validity [11] 10/10 10/17  11/23 12/6 15/24 16/3  16/17 18/2 21/16 23/7  24/9  valsartan [2] 1/3 15/2  valuable [2] 7/23 8/12  value [1] 9/19  VANASKIE [4] 1/10 4/2  4/12 21/1  various [2] 7/12 14/14  very [9] 4/10 4/17 6/25  8/2 8/7 9/6 10/10 25/14  26/7  via [2] 1/6 4/1  Videoconference [1] 1/6  videoconferencing [1]  4/1  vigorously [1] 12/20</p>	<p>18/17 22/15  won't [1] 22/16  work [1] 5/23  world [1] 12/10  worth [3] 5/9 6/14 9/12  wouldn't [1] 15/24  written [1] 17/8  wrong [1] 11/25  wrote [1] 18/11</p>	
<p><b>T</b>  take [6] 4/22 5/13 5/23  19/1 26/8 26/15  taken [1] 6/24  targeted [1] 9/6  TEAMS [2] 1/6 4/1  teed [1] 4/21  ten [1] 6/17  terms [5] 17/14 17/20  18/23 22/7 25/25  test [2] 11/25 12/8  testified [2] 8/18 17/15  testimony [3] 10/13 12/5  13/11  Teva [3] 2/17 2/18 2/18  thank [10] 6/20 9/24 16/9  23/1 25/9 26/7 26/10  26/12 26/13 26/14  Thanks [2] 4/10 4/17  them [4] 10/7 15/7 18/22  22/17  theory [1] 8/3  therefore [1] 13/21  these [5] 7/14 11/15 15/6  18/22 20/23  they're [7] 9/17 12/8  12/11 13/19 16/4 16/5  25/14  they've [16] 8/25 9/14  9/15 9/17 10/12 10/14  11/15 11/22 12/4 12/4  12/5 13/10 13/11 22/13  22/22 23/23  thing [4] 15/14 19/15  21/5 22/24  things [1] 14/14  think [18] 4/9 5/5 5/10</p>	<p><b>U</b>  U.S [3] 1/7 2/11 2/11  ultimately [1] 15/4  unanticipated [1] 4/8  under [3] 9/7 10/6 12/7  understanding [3] 10/4  18/10 18/15  understood [1] 16/18  unduly [1] 15/2  uniformly [1] 7/19  UNITED [1] 1/1  unless [1] 6/25  until [1] 13/16  up [12] 4/8 4/15 4/15  4/21 4/22 6/4 11/23 13/16  18/22 19/1 21/2 23/9  updated [1] 5/8  us [5] 20/9 20/13 20/24  23/23 23/24  USA [1] 2/18  using [1] 6/3</p>	<p><b>W</b>  Wacker [1] 2/16  wait [1] 14/24  Wall [1] 3/3  want [18] 5/4 5/8 7/5  13/9 13/14 14/15 14/20  14/21 16/10 16/24 19/1  19/23 20/15 22/6 22/21  23/11 24/7 25/1  wanted [4] 5/1 11/19  23/15 24/8  Washington [1] 2/24  wasn't [4] 8/20 10/5  17/21 18/8  way [2] 9/20 12/21  we'd [1] 6/5  we'll [7] 11/1 11/2 15/9  15/10 25/4 26/1 26/8  we've [5] 5/11 5/22 7/12  10/9 13/8  Wednesday [1] 1/9  week [3] 13/17 13/23  21/1  week's [1] 16/13  weeks [1] 6/3  WEINSTEIN [1] 2/23  welcome [1] 12/8  went [5] 15/18 15/21  21/6 21/11 21/12  weren't [1] 5/16  West [2] 2/9 2/16  whatever [1] 10/14  whether [3] 12/2 19/1  25/20  while [1] 8/20  WHITELEY [2] 1/20  1/20  whole [2] 6/4 14/14  WILEY [1] 2/23  will [11] 4/4 4/7 4/8 4/11  6/19 12/18 15/3 16/6 18/4  24/5 25/11  willing [2] 8/21 11/20  within [1] 6/17  without [4] 10/17 14/10</p>	<p><b>Y</b>  Yeah [4] 6/8 16/23 24/25  24/25  year [2] 15/18 15/21  years [4] 14/24 21/2 22/1  22/9  yes [7] 6/1 7/7 13/13 16/8  19/8 21/21 25/17  York [4] 2/10 2/10 3/3  7/17  you [41]</p>	<p><b>Z</b>  ZALMAN [6] 2/2 4/7  13/12 19/7 21/19 25/2  Zhejiang [1] 2/10  ZHP [2] 2/11 6/14</p>